



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

January 18, 2017

David Murillo, Regional Director
Bureau of Reclamation, Mid-Pacific Region
2800 Cottage Way, MP-700
Sacramento, CA 95825

Subject: Final Environmental Impact Statement for the Bay Delta Conservation Plan/California WaterFix CEQ# 20160318

Dear Mr. Murillo:

The U.S. Environmental Protection Agency has reviewed the Bay Delta Conservation Plan/California WaterFix Final Environmental Impact Statement (FEIS) pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

The WaterFix project evolved from the Bay Delta Conservation Plan (BDCP), which was proposed as a Habitat Conservation Plan (HCP) to support the issuance of a 50-year incidental take permit under Section 10 of the Endangered Species Act (ESA). EPA's August 26, 2014 comments on the Draft EIS for the BDCP detailed our significant concerns with that proposal and its potential adverse impacts on water quality and aquatic life in the Bay Delta. We withheld our rating due to the lead agencies' commitment to produce a Supplemental Draft EIS. In April 2015, the Bureau of Reclamation (Reclamation) and California Department of Water Resources (DWR) announced fundamental changes to the proposed project and changed its name from BDCP to the California WaterFix. The WaterFix project focuses on the construction and operation of proposed new water export intakes on the Sacramento River to divert water into a 35-mile twin tunnel conveyance facility.

In our October 30, 2015 review of the SDEIS, we noted that the proposed WaterFix project continued to predict significant adverse impacts to the Delta and its resources. As we reiterated in that letter, the most essential decision for achieving the desired balance of water reliability and restoration of the Bay Delta ecosystem is how freshwater flows through the Delta will be managed. We noted that decisions regarding appropriate flow management are being deferred, pending future regulatory actions by multiple state and federal agencies that will determine operational parameters important to the evaluation of the project's impacts. Because information was not available for a complete evaluation of environmental impacts, we found the SDEIS to be inadequate.

The FEIS provides a modified statement of the purpose of the federal action, no longer mentioning construction. It clarifies that the purpose of the Reclamation's proposed action is "to improve movement of water entering the Delta from the Sacramento Valley watershed to existing Central Valley Project (CVP) and State Water Project (SWP) pumps in the south of the Delta in a manner that minimizes or avoids adverse effects to listed species, supports coordinated operation with the SWP, and is consistent with the Project Objectives", which include ecosystem restoration and "delivery of up to full contract

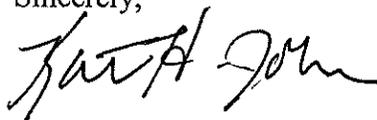
amounts of CVP Project water” when conditions are such that sufficient water is available. This purpose would be accomplished by adjusting the operations of the CVP, specific to the Delta, to accommodate new conveyance facility operations and flow requirements. As explained in the joint document, DWR intends to pursue construction of dual, 40-foot diameter, 35-mile long tunnels under the Sacramento-San Joaquin Delta to provide such conveyance.

To date, none of the regulatory processes mentioned in our SDEIS letter have been completed. The impact analysis in the FEIS is based on updated modeling that more accurately reflects the proposed project operations to the limited extent that they can be predicted at this time, and an appendix to the document includes information from the Biological Assessment. Nevertheless, the FEIS continues to predict that water quality for municipal, agricultural, and aquatic life beneficial uses will be degraded and exceed standards as the western Delta becomes more saline. Significantly, the FEIS’ conclusions regarding impacts to aquatic life remain unchanged from those in the SDEIS, predicting substantial declines in quantity and quality of aquatic habitat for 15 of 18 fishes evaluated under WaterFix preferred operations.

Because the operations proposed in the FEIS do not reflect the real world operational scenarios likely to be generated by the aforementioned regulatory processes, the amount of water that will actually be available for diversion through the proposed conveyance facilities may differ significantly from what was assumed for purposes of the EIS/EIR. We continue to recommend that the federal and state lead agencies for WaterFix carefully consider such reasonably foreseeable operational constraints to ensure that the project is appropriately designed and operated to achieve the aforementioned balance and avoid unnecessary costs and environmental impacts.

EPA remains committed to working with our federal and state partners on actions to restore and protect the Bay Delta ecosystem and the communities that depend upon it. If you have any questions, please contact me at 415-972-3873. Alternatively, your staff may contact Stephanie Gordon, lead reviewer of the FEIS, at 415-972-3098.

Sincerely,

A handwritten signature in black ink, appearing to read "Kathleen H. Johnson".

Kathleen H. Johnson
Director, Enforcement Division